IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 1339 of 2001

1. Madarsa Imadadul
   T/o Landhora, Pargana Mangalore
   Tehsil Roorkee, District Haridwar
   Through Mohd. Ashique, Manager, Madarsa Uprokt
   R/o Kasba Mangalore
   Tehsil Roorkee, District Haridwar
2. Mohd. Ashique S/o Mr. Niyaj Ahmad Manager
   Madarsa Imadudul Islam
   R/o Landhora Pargana
   Mangalore, Tehsil Roorkee
   District Haridwar ... Appellants

Vs

1. Hajji Mohd Ikbal S/o Hajji Mohd Akhtar
2. Vakeet Ahmad S/o Hajji Jahur Hasan
3. Hafhij Mohmod Hasan S/o Barkat Ali
   All R/o Kasba Ladaro Pargana Mangalore
   Tehsil Roorkee
   District Haridwar ... Respondents

Sri Sharad Sharma, learned counsel for the appellants
Sri Rajendra Singh, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This second appeal, U/S 100 C.P.C., has been preferred against the judgment and order dated 30-5-2001, passed by Civil Judge (S.D.), Roorkee, District Haridwar in C.A. No. 33/1999, Madarsa Imadadul Islam and others Vs. Hajji Mohd. Ikbal and others, dismissing the appeal and affirming the judgment and decree dated 20-8-1999, passed by the Civil Judge (J.M.) Roorkee, In O.S. No. 77/1995.

2. Brief facts of the case are that the appellant/plaintiff Madarsa Imadadul Islam is an educational institution and the plaintiff Mohd. Ashik is its Manager. The defendant Hajji Mohd. Ikbal is an influential person and is the follower of the Islam. He offered his help to the plaintiff in the works of the institution. For this purpose he went to the court

in order to prepare papers regarding giving him the rights of cultivation of the land to the defendants. According to the plaintiff he is not an educated person. The defendant prepared forged agreement deed of sale of the property in dispute and got obtained the thumb impression of the plaintiff. The Registrar also did not make any enqiury in this regard. When in mutation proceedings were started notice was received by the plaintiff then he came to know about the fraud committed upon him by the defendants. Hence he filed the suit for cancellation of sale deed.

3. The defendant No.1 contested the suit by filing the written statement before the trial court. he pleaded that he has purchased the disputed land from the defendant No.2 at the cost of Rs. 96,000/-. The sale deed was executed on 3-5-1994 and possession of the land was delivered to him. The plaintiff had been shown owner with transferable rights in the revenue records. It was also alleged that the question of declaration of title is involved in the suit, hence the suit is barred by the provision of Section 331 of U.P. Z.A. and L.R. Act.

4. The trial court on the pleadings of the parties framed the following issues in the suit:-

1- Whether the plaintiff No.1 is the owner in possession of the disputed land?.
2- Whether the disputed sale deed is liable to be cancelled on the grounds mentioned in the plaint?.
3- Whether the plaintiff No.1 is not a legal person? Its effect?.
4- Whether the suit is bad for joinder of defendants 2 and 3 as unnecessary parties?.

5- Whether the suit is barred by the provisions of Section 34 of Specific Performance Act?.
6- Whether the suit is barred by the provisions of Section 331 of U.P. Act No.1 of 1951?.
7- Whether the defendant No.1 is bonafide purchaser of the land in suit?.
8- Whether the suit is barred by the principle of estoppel and acquiescence?.
9- Relief?.

5. Parties led evidence in support of their cases.

6. The trial Court after hearing the learned counsel for the parties and perusing the evidence on record dismissed the suit of the plaintiff.

7. Feeling aggrieved the plaintiff preferred first appeal before the Civil Judge (S.D.), Roorkee, which was also dismissed vide impugned judgment and order dated 30-5-2001.

8. Now feeling aggrieved by the aforesaid judgment and order dated 30-5-2001, the plaintiff has preferred this second appeal before this court.

9. Following substantial questions of law have been framed for adjudication in this second appeal:-

A. Whether in accordance to the Muslim Personal Law, the property belonging to a Charitable Institution could be put to sale by the Manager of the Institution.

B. Whether the appellant No. 2 who had denied his right to the sell the property as being the caretaker of the religious property renders the judgment as to be void ab-initio.

C. Because from the evidence on record it is admittedly proved that the property and the title of it was vested with religious institution and the peoperty was in possession of it, hence there was no right vested with appellant No. 2 which renders the sale bad and deserve to be set aside.

D. Whether the judgment and the decree of the court below is bad as not being in consonance to the provisions of the order 41 of the code civil procedure.

E. Whether both the court below have failed to interpret judicial pronouncement filed by the appellant before the Court below.

F. Whether at the time of the execution of the deed it was mandatory by the deed writer to have read over the contents of the sale deed so as to enable to appellant to understand the contest of the same having failed to do so rendered the sale deed to be bad against the law.

G. Whether in view of the provisions of the evidence act as contained under section 101 to 104 and 111 were mandatory, when the execution of the deed is denied on account of the fact the same was obtained by fraud the burden of prove of its execution before the registrar vest with the defendants respondents, which was not discharge, hence the sale deed deserves to the set aside.

H. Whether it is always the burden of beneficiary to prove the validity of the sale deed and not the person who denies the execution of the same.

I. Whether the executants of a document being an illiterate person and the thumb impression has been obtained by fraud renders the sale deed to be void and not void able the inference drawn to the contrary by the court and against the law.

J. Whether the deed without consideration would be an invalid document.

K. Whether in view of the provisions of section 137, 138 and 155 when the defendant fails to question and cross-examine the opponents witness the presumption is that the evidence is accepted. Testimony of the witness cannot be disputed.

L. Whether withholding of the evidence it is the duty of the Court to derive the adverse infrence.

M. Whether registration of a document is only the notification of the factum of a document; it has no bearing on the legality of the transaction.

N. Whether the head of a religious intitution gets the estate for the maintenance of the same he has not right to sell the property.

10. Heard learned counsel for the parties and perused the record.

11. Learned counsel for the appellant has pressed the second appeal only on the following substantial questions of law:-

A. Whether in accordance to the Muslim Personal Law, the property belonging to a Charitable Institution

could be put to sale by the Manager of the Institution.

M. Whether registration of a document is only the notification of the factum of a document; it has no bearing on the legality of the transaction.

12. I have considered the arguments advanced by the learned counsel for the appellant and perused the judgment passed by the courts below. Both the courts below have recorded concurrent findings of fact that the property was sold by the plaintiff No. 2 in favour of the defendant No. 2 in the personal capacity. Both the courts below have also observed that the property does not belong to that charitable trust. I do not find any ground for interference in the concurrent findings of fact recorded by the courts below. It is well settled law that how so ever erroneous may be findings of fact, the same cannot be interfered with in the second appeal. Therefore, I am of the view that the substantial question of law as have been indicated by the learned counsel for the appellant before me, are decreed against the appellant in view of the finding of facts recorded by court below.

13. The second appeal lacks merit and is liable to be dismissed.

14. Accordingly, the second appeal is dismissed in-limine.

(B.C. Kandpal, J.)

20.09.2006
ASWAL